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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT and FRED R. STEWART et al.,
Appellants,

vs.

YOSEMITE PARK AND CURRY CO.,
Appellee.

APPELLANTS' OPENING BRIEF

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APPELLANTS' OPENING BRIEF

A. STATEMENT OF FACTS

The Yosemite Park and Curry Company is a corporation operating in the Yosemite National Park in California. Incident to its business it sells alcoholic beverages to its patrons. The company imported alcoholic beverages to its place of business in the park from the adjoining State of Nevada, without first being licensed by the State of California so to do.

The State Board of Equalization of the State of California, the administrative agency of the state in

the enforcement of the State Alcoholic Beverage Control Act threatened to seize such imports under the provisions of sections 49 and 51 of the act on the grounds that the alcoholic beverages were not consigned to a licensed importer of alcoholic beverages (section 49) and that the containers of the alcoholic beverages did not bear the state excise tax stamps (section 51).

B. APPELLANTS' ARGUMENT

I. The Twenty-first Amendment Prohibits the Importations Here Involved Since They Are Contrary to the Laws of California

The Twenty-first Amendment to the Constitution of the United States provides, in section 2, as follows:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The law of California here involved is the State Alcoholic Beverage Control Act (Statutes 1935, Chapter 330, as amended by Statutes 1937, Chapter 758).

Section 49 of the Alcoholic Beverage Control Act provides as follows:

> "SEC. 49. Alcoholic beverages shall be brought into this State from without this State for delivery or use within the State only when such alcoholic beverages are consigned to a

licensed importer and only when consigned to the premises of such licensed importer or to the premises of a public warehouse licensed under this act. Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State. Alcoholic beverages imported into this State contrary to the provisions hereof shall be seized by the board. Every person violating the provisions of this section shall be guilty of a misdemeanor."

Section 49.2 of the Alcoholic Beverage Control Act provides as follows:

"SEC. 49.2. Common or private carriers transporting alcoholic beverages into this State from without the State for delivery or use within this State must obtain the receipt of the licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent for the alcoholic beverages so transported and delivered and, if the consignee refuses to give such receipt and show his license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverages. Where the consignee is not a licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent or where the consignee refuses to give his receipt and show his license the carrier shall immediately notify the board at Sacramento giving full details as to the character of shipment, point of origin, destination and address of the consignor and consignee, and within ten days such alcoholic beverages

shall be delivered to the board and shall be forfeited to the State of California. If any alcoholic beverages seized under the preceding section or forfeited under this section are sold by or under the direction of the board the common carrier's unpaid freight and storage charges accruing on the shipments of such alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of such sale and any excise taxes accruing thereon. Every person violating the provisions of this section shall be guilty of a misdemeanor."

The phrases "within the state" and "without the state" are defined in the act as follows:

"SEC. 2(w). '*Within this State*' means all territory within the boundaries of this State."

"SEC. 2(wl). '*Without the State*' means all territory without the boundaries of this State."

The boundaries of California are set forth in her Constitution, in Article XXI, as follows:

"SECTION 1. The boundary of the state of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction, to the River Colorado, at a point where it inter-

sects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast."

In view of the statutory definitions of "within this state" and "without this state" there can be no doubt that the state legislature, in adopting the provisions of the Alcoholic Beverage Control Act, did everything possible to make plain its intention to bring under the control and regulation of the Alcoholic Beverage Control Act all intoxicating liquors coming within the physical boundaries of the state.

A similar statutory phrase, i. e., "within this state," was construed in the case of *Rainier National Park Co.* vs. *Martin,* 18 Fed. Supp. 481, where the Retail Sales Tax Act of the State of Washington was contested before a three-judge federal district court. The act had imposed a retail sales tax on all retail merchants engaging

in business "within this state." The Rainier National Park Company contested the applicability of the tax to its business done within the limits of the federally maintained and operated Rainier National Park, over which the State of Washington had granted the Federal Government exclusive jurisdiction. One contention made was that the park was not "within" the State of Washington. As to this the court said, at page 486:

> "As seen above, the retail sales tax is applicable to 'each retail sale in this state'; the business and occupation tax is levied upon persons engaged in the business of making sales at retail within this state, and upon every person engaging in any business activity other than or in addition to those enumerated 'within this state'; the highway transportation tax is levied on persons engaged in the business of highway transportation 'within this state'; and the public utility, light, and power tax is levied upon persons engaging in the businesses of water distribution, light and power, telephone and telegraph businesses 'within this state.'
>
> "The terms 'in this state' and 'within this state' as here used obviously mean within the geographical limits of the state. The park is within those limits, and the area comprising the park is not by such terms excluded from the other areas where the tax is obviously applicable."

This case was appealed to the United States Supreme Court and the judgment affirmed on Jan-

uary 17, 1938. (Case No. 334, October Term 1937; 58 Sup. Ct. Rep. 478.)

To the same effect in holding that federal reservations are territorially within a state are the following cases dealing with the converse situation, i. e., exports, where claims were unsuccessfully made that shipments from a state into a federal reservation, over which the state had ceded jurisdiction, should be considered as export shipments to points outside the boundaries of the state:

McKesson & Robbins, Inc. vs. *Collins*, 18 Cal. App. (2d) 648;
Grayburg Oil Co. vs. *State*, 3 S. W. (2d) 427;
Grayburg Oil Co. vs. *State*, 286 S. W. 489.

Indeed, the Twenty-first Amendment is so plain in its language that it needs no statutory construction. (*State Board* vs. *Young's Market Co.*, 299 U. S. 59.) Any construction other than that set forth heretofore would defeat the very purpose of the amendment (which was to return to the states sole jurisdiction over intoxicating liquors delivered or used within their boundaries) by permitting wet areas to flourish in dry states and unlicensed areas to flourish in licensing states.

This Supreme Court, in the case of *State Board of Equalization* vs. *Young's Market Co., supra* (299 U. S. 59), held that the language of the Twenty-first Amendment was entirely clear and was apt to confer upon the state the power to forbid all

importations which did not comply with the conditions it prescribed (page 62).

Such is the case here. The state has prescribed the conditions upon which intoxicating liquors could be imported into the state. All importations not in accordance with those conditions were, and are, prohibited. The appellee has not complied with the conditions. Can anything be plainer, then, than the error of the lower court in this case?

a. Lower Court's Interpretation of the Effect of the Twenty-first Amendment Erroneous

The lower court in this case took the position that once the state relinquished jurisdiction over an area to the Federal Government, thereafter its power was gone absolutely and that the Twenty-first Amendment did not increase the jurisdiction of the state over such areas. That position, we believe, is fallacious.

Prior to the Wilson Act (26 Statutes 313; 27 U. S. C. A. 121), intoxicating liquors enjoyed the same rights of freedom from state interference while in interstate commerce as any other commodity. The state had no jurisdiction over such merchandise so long as it was in its original package and until sold by the importer. (*Brown* vs. *Maryland,* 25 U. S. 419; *Leisy* vs. *Hardin,* 135 U. S. 100.) So far as jurisdiction was concerned a state had no more jurisdiction over such com-

modities while in interstate commerce than it did over areas to which it had ceded jurisdiction to the Federal Government. Indeed, not as much, for as to interstate commerce the states, by constitutional provision (U. S. Constitution, Article I, section 8, clause 3), specifically gave up all jurisdiction over such commerce to the Federal Government, while as to national park areas there is nothing in the Constitution of the United States which sanctions a grant by the states to the Federal Government of exclusive jurisdiction over them.

And yet when the claim was made to this court that the Twenty-first Amendment did not remove intoxicating liquors from the protection of the commerce clause, this court promptly rejected the claim in view of the clear and unequivocal language of the Twenty-first Amendment (*State Board of Equalization* vs. *Young's Market Co., supra,* 299 U. S. 59). It follows from this decision that any other realm of jurisdiction formerly prohibited to a state through the protection of federal law have been removed by the provisions of the Twenty-first Amendment, which is latest in point of time.

In view of the provisions of the Twenty-first Amendment we believe that the lower court erroneously reached the conclusion it did in interfering, by injunction, with the officers of the State of California, and therefore its order and judgment should be reversed.

II. Furthermore, Even If the Twenty-first Amendment Is Totally Disregarded the Lower Court Erred Because the State Has Jurisdiction Over the Appellee Company Located in Yosemite National Park

While we believe that the Twenty-first Amendment fully supports our contention that the lower court erred in enjoining the state officials from interfering with the imports involved, nevertheless even without the benefit of the Twenty-first Amendment we shall proceed to show that the conclusion reached by the lower court was erroneous.

Our contention in this regard is that the State of California never had the power to cede, and the United States never had the power to accept, "exclusive" jurisdiction over Yosemite National Park which is located within the territorial boundaries of the State of California.

The question was presented but not answered in the case of *Arlington* vs. *Fant,* 278 U. S. 439, 454, this court there stating:

> "Counsel for the plaintiffs in the present case insist that the United States has the constitutional authority to maintain exclusive jurisdiction over the tract here in question as a national park, and that as the Government undoubtedly may use its control over all land within its exclusive jurisdiction to provide national parks, it may, where land is ceded by a State to the exclusive jurisdiction of the National Government, treat land thus ceded by the

State for such a purpose as it would treat national public land which had never come within the jurisdiction of the State; that as by virtue of Article 4 of the Constitution, Section 3, Congress has power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, it may treat land ceded to it by a State for the purposes of making a national park exactly as it would treat land which had always been within its exclusive jurisdiction and subject to its disposition for park purposes. This issue may in the future become a subject of constitutional controversy, because some twenty or more parks have been created by Congress, in a number of which exclusive jurisdiction over the land has been conferred by act of cession of the State. We do not find it necessary, however, now to examine this question."

The court recognized the importance of the question in that case. We proceed to point out how the question must be answered against any claim of exclusive jurisdiction.

Before proceeding further it is necessary at this point to give an historical review of the ownership and control over the lands embraced within Yosemite National Park. On February 2, 1848, the United States had ceded to it by the Republic of Mexico under the treaty of Guadalupe Hidalgo all of the lands embraced within the territorial limits of California (9 Statutes 922). When Cali-

fornia was admitted into the union on September 9, 1850, "on an equal footing with the original states in all respects whatever" no reservation of jurisdiction over these lands was made by the Federal Government (9 Statutes 452). On June 30, 1864, (13 Statutes 325) congress granted to the state for park purposes a portion of Yosemite National Park known as the "cleft" or "gorge." On October 1, 1890, (26 Statutes 650) congress set aside as a national forest and withdrew from occupancy and sale certain additional lands surrounding the "cleft" or "gorge."

In 1872 the California legislature (Political Code, Sec. 34; see Appendix "A") passed an act of cession relating to forts, magazines, etc., which corresponded to Article I, section 8, clause 17, of the United States Constitution. In 1891 the California legislature passed a general act of cession (Statutes 1891, page 262; see Appendix "B") which ceded to the United States exclusive jurisdiction over any parcel of land "as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this state and the service of civil process therein."

Then, on March 3, 1905, (Statutes 1905, page 54; see Appendix "C") the State of California receded and regranted to the Federal Government

the "cleft" or "gorge" in trust for park purposes and on June 11, 1906, (34 Statutes 831; see Appendix "D") this recession was accepted by congress.

Thereafter, on April 15, 1919, (Statutes 1919, page 74; see Appendix "E") the State of California ceded exclusive jurisdiction over Yosemite National Park to the Federal Government reserving, among other things, "the right to tax persons and corporations, their franchises and property on the lands included in said parks." By Act of June 2, 1920, (41 Statutes 731; see Appendix "F") congress accepted this exclusive jurisdiction with the reservation above mentioned.

The only method provided by the Constitution of the United States by which the National Government may obtain exclusive jurisdiction over territory within a state is under the provisions of Article I, section 8, clause 17, as follows:

> "The Congress shall have Power * * * to exercise like authority (exclusive Legislation in all cases whatsoever) over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-yard, and other needful Buildings; * * *."

Under this clause the place must be for one of the enumerated purposes.

When the purpose for which the place was purchased is not a "fort, magazine, arsenal, dockyard

or other needful building" the United States can not obtain exclusive jurisdiction.

In the case of *New Orleans* vs. *United States,* 35 U. S. 660, the Supreme Court of the United States, at page 736, stated as follows:

> "Special provision is made in the constitution, for the cession of jurisdiction from the states over places where the federal government shall establish forts, or other military works. *And it is only in these places,* or in the territories of the United States, where it can exercise a general jurisdiction.
>
> The state of Louisiana was admitted into the Union, on the same footing as the original states. Her rights of sovereignty are the same, and by consequence, no jurisdiction of the federal government, either for purposes of police or otherwise, can be exercised over this public ground, which is not common to the United States. It belongs to the local authority to enforce the trust, and prevent what they shall deem a violation of it by the city authorities. All powers which properly appertain to sovereignty, which have not been delegated to the federal government, belong to the states and the people."

And in *Nikis* vs. *Com. of Va.,* 131 S. E. 236, the Supreme Court of Virginia stated, at page 239:

> "In order to be accorded immunity from state taxation, the accused must not only show that the land is acquired by the United States, but also that it is for one or more of the

purposes so clearly indicated in article 1, Sec. 8, cl. 17, of the Constitution. We are clear in our view that he is not entitled to any such immunity.

It is suggested in the brief for the accused that the sole test is whether or not the land has been acquired in the manner referred to in the clause cited; that is, over 'places purchased by the consent of the Legislature of the state in which the same shall be.' Clearly, however, this is not the sole test, because it is manifest that the land must also be acquired for one of the specific purposes which are indicated in the clause, namely, for a fort, magazine, arsenal, dockyard, or other needful building."

Certainly a national park is not a "fort, magazine, arsenal, dockyard or other needful building" and if not the Federal Government has no authority to assume exclusive jurisdiction over the park.

There are cases decided by this court which have held that where, as here, the lands were owned by the Federal Government prior to the admission of the state into the Union, exclusive jurisdiction may be granted by the state by an appropriate act of cession. But in each case the situation reveals one of the enumerated purposes.

In *Arlington Hotel Co.* vs. *Fant,* 278 U. S. 439, a military hospital was involved; in *Battle* vs. *U. S.,* 209 U. S. 36, a post office; while in *Benson* vs. *U. S.,* 146 U. S. 325, *Fort Leavenworth R. R. Co.* vs. *Lowe,* 114 U. S. 525, *Chicago, Rock Island*

& Pacific R. Co. vs. *McGlinn,* 114 U. S. 542, *Standard Oil Co.* vs. *California,* 291 U. S. 242, *Surplus Trading Co.* vs. *Cook,* 281 U. S. 647, *U. S.* vs. *Unzenta,* 281 U. S. 138, military reservations were involved. In *James* vs. *Dravo Construction Co.,* 58 Sup. Ct. Rep. 208, locks and dams for the improvement of navigation were held to be within the phrase "and other needful buildings."

The only case in which a nonenumerated purpose was involved was that of *Yellowstone Park Transportation Co.* vs. *Gallatin County,* 31 Fed. (2d) 644, certiorari denied 280 U. S. 555, but that case specifically omitted to pass upon the point now presented and did no more than rely on the then recent decision of *Arlington Hotel Co.* vs. *Fant. supra* (278 U. S. 439), where this court had gone to great pains to show that the case came within an enumerated purpose under Article I, section 8, clause 17, which was an entirely different situation.

It is needless to cite authorities upon the proposition that the Federal Government is a government of limited and delegated powers and its legislative powers must be found in the powers granted by the states to the Congress of the United States in Article I, section 8, of the United States Constitution. In clause 17 are specifically enumerated the purposes for which the Federal Government can obtain exclusive jurisdiction over lands lying within the states. As to purposes not

therein mentioned, congress has no authority to attempt such exclusive jurisdiction through congressional acts. It follows that the Congressional Acts of 1906 and 1920, in so far as they attempt to accept "exclusive" jurisdiction for park purposes are unauthorized, invalid and void.

No question is raised in this case as to the authority of congress to provide for national parks for such is not involved and to dispose of this case it is not necessary to pass upon that question.

III. Regardless of the Disposition of the Two Previous Points, the State Has Jurisdiction to Tax Sales by the Appellee Company of Alcoholic Beverages

As to the right of the state to tax the alcoholic beverages sold by the appellee, two things must be considered: (a) the provision in the Constitution of the State of California prohibiting the state from granting away its taxing power, and (b) the taxing reservations in the acts of cession.

a. Prohibition Against Granting Away Taxing Power

At the time the acts of cession were enacted by the legislature of California there was in existence section 6 of Article XIII of the State Constitution, adopted in 1879, which reads as follows:

> "The power of taxation shall never be surrendered of suspended by any grant or contract to which the state shall be a party."

As to acquisitions by the Federal Government it makes no difference whether the acquisition is

under Article I, section 8, clause 17, or not, the Federal Government is not entitled, as a matter of right, to exclusive jurisdiction. (*James* vs. *Dravo Construction Co.*, 58 Sup. Ct. Rep. 208.) The state may, in any case, attach reservations to its consent. The *James* case, *supra,* presented the situation of an acquisition under Article I, section 8, clause 17. Other cases hold to the same effect as to acquisitions, as here, not under Article I, section 8, clause 17. (*Fort Leavenworth R. R. Co.* vs. *Lowe*, 114 U. S. 525; *Silas Mason Co.* vs. *Tax Comm.*, 58 Sup. Ct. Rep. 233.)

Where the extent of jurisdiction in the Federal Government depends upon the grant of jurisdiction by the state, the Federal Government can obtain no greater jurisdiction than the state legislatures can validly grant. And in California, when the cession acts were passed, the legislature could not in any act passed by it, surrender or suspend to anyone, the Federal Government included, the power to tax. Any attempt to do so was violative of the constitutional provision above quoted. The Federal Government could, and did, gain nothing through any such invalid act.

So as to the matter of taxation, because of this state constitutional restriction the State of California never did, or could, validly surrender or suspend its right to tax within the boundaries of the Yosemite National Park, and the appellee is in

no position to claim immunity from taxation because of such constitutional restriction.

And since the alcoholic beverages here imported did not bear the state excise tax stamps the state had the right to seize them under the provisions of section 51 of the Alcoholic Beverage Control Act, which provides as follows:

> "SEC. 51. The board shall also have the power to seize the following alcoholic beverages: (3) Distilled spirits except (a) distilled spirits located upon premises for which licenses authorizing the sale of such distilled spirits have been issued; (b) distilled spirits consigned to and in the course of transportation to a licensee holding licenses authorizing the sale of such distilled spirits or for delivery without this State; (c) distilled spirits the containers of which bear the stamps herein required to be attached thereto; (d) alcohol or distilled spirits in the possession of a person who has lawfully purchased the same for use in the trades, professions or industries and not for beverage use."

and the lower court in enjoining the seizure on this ground erred.

b. Taxing Reservations in Acts of Cession and Acceptance

Assuming for the sake of further argument that the constitutional provision of California did not prevent the state legislature from surrendering or suspending the taxing power over the Yosemite National Park, then, nevertheless, the appellee com-

pany is still subject to taxation under the Alcoholic Beverage Control Act because the right to levy such taxes was expressly reserved in the acts of cession and acceptance.

The California Supreme Court has already held that as between the California Act of 1891 and the California Act of 1919, the latter act, taken in connection with the 1920 congressional act of acceptance constitutes the latest definition and recognition of the rights and powers of the respective sovereign parties.

Standard Oil Company vs. *Johnson,* __ Cal. __; 95 Cal. Dec. 229 (See Appendix "G").

The authorities are uniform to the effect that where lands are acquired by the Federal Government in ways other than under Article I, section 8, clause 17, the state in granting exclusive jurisdiction may reserve the right to tax and that such a reservation will be upheld when not inconsistent with the purpose of the acquisition.

Fort Leavenworth R. R. Co. vs. *Lowe,* 114 U. S. 525, 541;

James vs. *Dravo Construction Co.,* 58 Sup Ct. Rep. 208, 213;

Silas Mason Co. vs. *Tax Comm.*, 58 Sup. Ct. Rep. 233.

In the instant case the State of California, in its act of cession (Statutes 1919, page 74), provided as follows:

"* * * saving further, to the said state the right to tax persons and corporation, their franchises and property on the lands included in said parks."

The act of congress (41 Statutes 731) accepting this cession of jurisdiction, provided that this taxing power should be reserved to the state, the exact language of the act of cession (quoted above) being employed in the act of acceptance.

Is the tax imposed by the Alcoholic Beverage Control Act within the statutory reservation? This question must be answered in the affirmative. The tax is an excise tax of eighty cents a gallon on the sale of distilled spirits (Sec. 24) and two cents a gallon on the sale of beer and wine (Sec. 23).

In *Rainier National Park Company* vs. *Henneford,* 182 Wash. 159, 45 Pac. (2d) 617, a company operating in a national park sought to contest the validity of an excise tax levied by the State of Washington on businesses and occupations. The court held that although the tax was an excise tax and not a property tax, nevertheless the tax was valid. Certiorari was denied by this court in 296 U. S. 647. In this connection it will be remembered that the Washington act of cession contained a reservation of taxation in language similar to the California statute. (See: statute set forth in *Rainier National Park Co.* vs. *Martin,* 18 Fed. Supp. 481.)

In *Rainier National Park Co.* vs. *Martin,* 18 Fed. Supp. 481; the same conclusion was reached where it was held that within the right reserved to tax "persons and corporations, their franchises and property" were included excise taxes consisting of taxes on retail sales, taxes on businesses and occupations, taxes on highway transportation and taxes on public utilities. And this case was affirmed on appeal by this court in 58 Sup. Ct. Rep. 478.

And in *Standard Oil Co.* vs. *Johnson,* -- Cal. --, 95 Cal. Dec. 229, (See: Appendix "G"), it was held that within the very reservations here involved in the California act of cession relating to Yosemite National Park were included the excise tax on retail sales and the excise tax on the sale of Motor Vehicle Fuel.

These authorities definitely hold that a tax based on sales of personal property, although an excise tax, is within the reserved taxing power under a reservation to tax "persons and corporations, their franchises and property."

One question remains: does the fact that the corporation involved operates within the national park under a contract with the Federal Government exempt it from state taxation? This question must be answered in the negative.

In the cases of *Rainier National Park Company* vs. *Henneford,* 182 Wash. 159; 45 Pac. (2d) 617; certiorari denied, 296 U. S. 647; and *Rainier Na-*

tional Park Co. vs. *Martin,* 18 Fed. Supp. 481, affirmed in 58 Sup. Ct. Rep. 478, the plaintiff company sought to avoid the taxing statutes of the State of Washington by claiming that such a tax would be a burden upon the Federal Government by taxing a federal instrumentality. The contention was rejected in both cases.

The same claim was made by the appellee corporation herein before the Supreme Court of California in reference to the retail sales tax of California and the contention rejected. (*Yosemite Park & Curry Co.* vs. *Johnson,* __ Cal. __; 95 Cal. Dec. 236; See Appendix "H".) In disposing of the contention the Supreme Court of California said:

> "The plaintiff is a private corporation authorized to do business in this state. It operates as United States government lessee and concessioner in Yosemite Valley under a contract with the secretary of the interior. The additional contention herein that as such lessee and concessioner it is not subject to the reserved taxing power of the state has been answered adversely in the case of *Rainier National Park Co.* v. *Henneford,* 182 Wash. 159, 45 Pac. (2d) 617 (petition for writ of certiorari denied, 296 U. S. 647). In that case a similar lessee and concessioner operating in a national park was held subject to taxation by the state. (See also, *Silas Mason Co.* v. *State Tax Commission,* 188 Wash. 98, 61 Pac. (2d) 1269 (affirmed 58 Sup. Ct. Rep. 233), and *Rainier National Park* v.

Martin, 18 Fed. Supp. 481, affirmed 58 Sup. Ct. Rep. 478). We find no merit in the contention. Nor may it be said that the exercise of the reserved taxing power will hinder the Yosemite Park and Curry Company in the efficient performance of its contract with the federal government."

Moreover, even if the concessionnaire were a government instrumentality, there is no reason why the state could not impose a liquor tax upon it. In engaging in the sale of intoxicating liquors the Federal Government would not be engaging in the performance of any federal function. It would be engaging in a proprietary function and as such it could be taxed by the state.

The Federal Government has already imposed its liquor taxes upon states which are operating state stores.

South Carolina vs. *U. S.,* 199 U. S. 437;
Ohio vs. *Helvering,* 292 U. S. 360;
Com. vs. *Kyle,* 79 Fed. (2d) 520 (cert. den., 56 Sup. Ct. Rep. 442).

If the Federal Government can impose taxes on states which are engaged in the sale of intoxicating liquors without violating the provision against the taxation of a state instrumentality, then, conversely, the state may likewise tax a federal instrumentality which is engaging in the sale of intoxicating liquors.

c. The Liquor Tax Is Not a Regulatory Act

A statement is made in the opinion of the lower court—a statement which indicates that the conclusion reached by that court upon the question of taxation was based on a misconception of the kind of tax imposed by the Alcoholic Beverage Control Act. On the last page of the opinion it is stated:

> "The California enactment is chiefly regulatory in nature * * *."

Such is not the case. While the act does license and regulate the traffic in alcoholic beverages it is also a large source of revenue for the general fund of the state. Eighty cents a gallon is levied against the distilled spirits sold (section 24); two cents a gallon against all beer and wine sold (section 23). These taxes produced for the state the following revenue:

1933	$633,013.72
1934	1,510,354.92
1935	5,819,035.73
1936	9,489,659.38
1937	10,272,818.80

NOTE.—The tax on distilled spirits became effective July 1, 1935.

Certainly such a huge return from taxes does not indicate the presence of a regulatory measure. In addition to the above taxes fees for licenses totalled $21,983,987.91 for the period 1933–1937.

Unquestionably the lower court was wrong in passing lightly over the taxing provisions of the

Alcoholic Beverage Control Act and referring to it as chiefly a regulatory measure.

So in this case, the sales of alcoholic beverages made by the appellee company are subject to the excise taxes provided for in the Alcoholic Beverage Control Act because (1) the state legislature was prohibited from surrendering or suspending its taxing power, and (2) the acts of cession and acceptance reserved to the state the right to levy upon and collect from the appellee company the type of tax imposed by the Alcoholic Beverage Control Act.

C. CONCLUSION

For the foregoing reasons the judgment of the District Court should be reversed with directions to dismiss the bill of complaint of the appellee.

Respectfully submitted.

U. S. WEBB,
Attorney General of
the State of California,
SEIBERT L. SEFTON,
Deputy Attorney General,
Attorneys for Appellants.

APPENDIX A
Political Code—Section 34

"The legislature consents to the purchase or condemnation by the United States of any tract of land within this state for the purpose of erecting forts, magazines, arsenals, dockyards and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made."

APPENDIX B
Statutes 1891, page 262
CHAPTER CLXXXI.

An act ceding to the United States of America jurisdiction over lands in this State ceded to the United States.

(Approved March 31, 1891.)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein.

SEC. 2. This act shall take effect immediately.

APPENDIX C

Statutes and Amendments to the Codes—California 1905

"CHAPTER LX.

An act to recede and regrant unto the United States of America, the 'Yosemite Valley,' and the land embracing the 'Mariposa Big Tree Grove.'

(Approved March 3, 1905.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State of California does hereby recede and regrant unto the United States of America, the 'Cleft' or 'Gorge' in the granite peak of the Sierra Nevada mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced river, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort and recreation by the act of congress entitled 'An act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the 'Mariposa Big Tree Grove,' approved June 30th, 1864; and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

SEC. 2. The State of California does hereby recede and regrant unto the United States of America, the tracts embracing what is known as the 'Mariposa Big Tree Grove,' granted unto the State of California in trust for public use, resort and recreation by the act of congress referred to

in section 1 of this act and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

SEC. 3. This act shall take effect from and after acceptance by the United States of America of the recessions and regrants herein made, thereby forever releasing the State of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort and recreation, and imposing on the United States of America the cost of maintaining the same as a national park. *Provided, however,* that the recession and regrant hereby made shall not affect vested rights and interests of third persons."

APPENDIX D

Section 1 of the Act of June 11, 1906 (34 Statutes 831)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove,"

approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page three hundred and twenty-five), as well as the tracts embracing what is known as the "Mariposa Big Tree Grove," likewise granted unto the State of California by the aforesaid Act of Congress, is hereby ratified and accepted, and the tracts of lands embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled "An Act to set apart certain tracts of land in the State of California as forest reservations," as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled "An Act to exclude from the Yosemite National Park, California, certain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve," and shall hereafter form a part of the Yosemite National Park.

APPENDIX E

Statutes 1919, page 74.

CHAPTER 51.

An act to cede to the United States exclusive jurisdiction over Yosemite national park, Sequoia national park, and General Grant national park in the State of California.

(Approved April 15, 1919. In effect July 22, 1919.)

The people of the State of California do enact as follows:

SECTION 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as "Yosemite national park," "Sequoia national park," and "General Grant national park" respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided,

however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks.

APPENDIX F

Section 1 of the Act of June 2, 1920 (41 Statutes 731)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall

have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California.

APPENDIX G

Sac. Nos. 5144, 5145. In Bank. February 25, 1938

Standard Oil Company of California (a Corporation Plaintiff and Appellant, v. Charles G. Johnson, as Treasurer of the State of California, Defendant and Respondent.

Appeals by plaintiff from judgments of the Superior Court of Sacramento County, Dal M. Lemmon, Judge, in actions to recover gasoline taxes paid under protest. *Affirmed.*

For Appellant—Pillsbury, Madison & Sutro.

For Respondent—U. S. Webb, Attorney General; W. H. Linney, Deputy Attorney General; James J. Arditto, Deputy Attorney General.

BY THE COURT.

The appeals in several actions brought by the plaintiff, Standard Oil Company of California, involve the question whether sales of gasoline in certain national parks are subject to the tax imposed by the Motor Vehicle Fuel License Tax Act (Stats. 1923, p. 577, as amended Stats. 1933, p. 1643). These appeals have been consolidated for determination. A related question is presented in the companion case of *Yosemite Park and Curry Co.* v. *Johnson,* wherein the Sales Tax Act (Stats. 1933, p. 2599, as amended), is involved. The determination herein will control the disposition of

the same questions presented in the *Yosemite Park and Curry Company* case, and the discussion herein with reference to the effect of the retail sales tax will be deemed sufficient for that purpose.

Standard Oil Company by its several actions sought to recover gasoline taxes paid under protest, which were imposed for the distribution and sale of gasoline within the boundaries of Yosemite national park, Sequoia national park and General Grant national park, located within the territorial limits of California.

The plaintiff is a private corporation authorized to do business in California. The problem revolves around the question whether the State of California ceded exclusive jurisdiction to the United States government of the areas comprising the various national parks in such a way as to divert itself of jurisdiction to impose and collect the taxes so paid under protest.

Demurrers to the various complaints were sustained and judgment entered for the defendants. The plaintiff appeals.

[1] On February 2, 1848, by the treaty of Guadalupe Hidalgo, the Republic of Mexico ceded to the United States government all the lands within the territorial limits of California. The United States thereby became vested with the title to all such lands not held in private ownership. (*Thompson* v. *Doaksum*, 68 Cal. 593, 596.) The areas now comprising the national parks hereinbefore mentioned were therefore then public lands. The United States retained title to these public lands upon the admission of California to statehood. (9 Stats. 452.)

On June 30, 1864 (13 Stats. 325), that portion of Yosemite national park designated in the act as the "'Cleft' or 'Gorge' in the Granite Peak of the Sierra Nevada mountains situated in the county of Mariposa * * * and the headwaters of the Merced River, and known as the Yo-Semite valley," was granted to the State of California upon the express condition that the "premises shall be held for public use, resort, and recreation." By the same act "Mariposa Big Tree Grove," comprising four sections of land, was granted upon like conditions.

On October 1, 1890 (26 Stats. 650), congress set apart as a national forest and withdrew from sale and occupancy certain tracts of the public lands in the Sierra Nevada, but expressly excepted therefrom the Yosemite valley and Mariposa big tree grove theretofore granted to California. A portion of those reserves surrounding Yosemite valley was later, on February 7, 1905, designated as "Yosemite National Park." (33 Stats. 702.)

On March 3, 1905 (Stats. 1905, p. 54), California receded and regranted to the United States without reservation the "Cleft" or "Gorge" known as Yosemite valley, and the "Mariposa Big Tree Grove," and resigned the trusts created and granted by the act of congress of June 30, 1864, upon condition that the lands be held by the United States for public use, resort and recreation. This recession was accepted by congress on June 11, 1906 (34 Stats. 831), *and the areas by the same act were included as part of Yosemite National Park.*

The area comprising Sequoia national park was withdrawn from occupancy and sale and dedicated as a public park on September 24, 1890 (26 Stats. 478). An act of congress (26 Stats. 651), enacted on October 1, 1890, established General Grant national park.

At the time of the recession to the United States of the Yosemite valley and Mariposa big tree grove there was in effect a statute passed by the legislature of California in 1891 (Stats. 1891, p. 262), providing: "The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this state and the service of civil process therein."

The plaintiff relies upon the foregoing quoted statute, together with the act of recession of 1905, as supporting its claim that the State of California by the regrant had relinquished exclusive jurisdiction to the United States in the area known as Yosemite valley, wherein occurred most of the transactions upon which the taxes involved were imposed and collected.

The defendant, however, contends that the act of the California legislature approved April 15, 1919 (Stats. 1919, p. 74), ceding to the national government jurisdiction over Yosemite national park, Sequoia national park and General Grant national park, and the act of acceptance by congress on June 2, 1920 (41 Stats. 731), constitute

the basis upon which depend the rights of the state herein.

The legislative act of 1919 in its pertinent parts provides: "Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Yosemite national park, Sequoia national park' and 'General Grant national park' respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks * * * and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks * * *."

The 1920 Act of Acceptance reads: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California, the right to serve civil or criminal process within the limits of the aforesaid parks * * * and saving fur-

ther to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks. * * *"

The contention of the plaintiff is that the state, having by the 1905 act of recession, granted exclusive jurisdiction of Yosemite valley to the United States, had nothing more to grant, and that the attempted cession of 1919 with reservations was an empty gesture. Answering this argument the defendant asserts that the 1905 act of recession did not vest exclusive jurisdiction in the United States, because, so he claims, such exclusive jurisdiction can be acquired only pursuant to clause 17, section 8, article I of the Constitution of the United States, which provides: "Congress shall have power to exercise exclusive jurisdiction in all cases whatsoever * * * over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." In this connection reliance is also placed on section 6 of article XIII of the state Constitution, providing that the power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party.

However, we deem it unnecessary to pursue the inquiry into the constitutional question whether exclusive jurisdiction may be ceded to or acquired by the United States of lands within the territorial limits of a state solely for recreational and park purposes. We need note only that the history

and reasons for the vesting in the United States of the power to hold exclusive jurisdiction for the enumerated purposes, and many aspects of the controversial question relating to acquisition of exclusive jurisdiction for other purposes, have been stated in the following cases, among others, and do not require repetition here: *Fort Leavenworth R. R. Co.* v. *Lowe,* 114 U. S. 533; *Benson* v. *United States,* 146 U. S. 325; *Arlington Hotel* v. *Fant,* 278 U. S. 439; *Surplus Trading Co.* v. *Cook,* 281 U. S. 647; *In re Kelly,* 71 Fed. 545; *People* v. *Mouse,* 203 Cal. 782; *Silas Mason Co.* v. *State Tax Commission,* 188 Wash. 98, 61 Pac. (2d) 1269, (affirmed 58 Sup. Ct. Rep. 233); *Ryan* v. *State,* 188 *Wash.* 115, 61 Pac. (2d) 1276, (affirmed 58 Sup. Ct. Rep. 233.) Beginning at least as early as the decision in *Fort Leavenworth* v. *Lowe,* the Supreme Court of the United States recognized that exclusive jurisdiction could be acquired otherwise than by purchase with the consent of the state legislature, namely by cession, if for one or more of the purposes enumerated in the federal constitutional provision. (See *Ryan* v. *State, supra,* 61 Pac. (2d) at 1281.) But whether exclusive jurisdiction by any means may be acquired for a purpose not so enumerated, may still be an open question. (See *Arlington Hotel* v. *Fant,* 278 U. S. 439; *In re Kelly,* 71 Fed. 545.) The controversial point that the United States has the constitutional power to acquire exclusive jurisdiction within state territorial limits of an area devoted solely to park and recreational purposes was expressly left open in the Arlington Hotel case at page 454. So far as we know only two

cases have since attempted to resolve the question. In *Yellowstone Park Transportation Co.* v. *Gallatin County,* 31 Fed. (2d) 644, (petition for writ of certiorari denied, 280 U. S. 555), the court upheld the exclusive jurisdiction of lands ceded to the United States by the state of Montana for park purposes. The opinion shows that no concurrent jurisdiction or taxing power was reserved and that the express grant of powers to the United States was inconsistent with the reservation of any concurrent jurisdiction. The court supported its statement that "Cessions of exclusive jurisdiction such as that made by the Legislature of Montana, have been very common in the history of this country, and their effect is well settled", by the sin[illegible]e reference to the Arlington Hotel decision. [illegible] other case, *Yosemite Park and Curry Co.* v. *Collins,* (Circuit Court of Appeals, Southern Div., Northern Dist. of California, No. 4165) will be later discussed.

If the legislative act of recession of 1905, the congressional acceptance thereof, and the related acts prior to that time, were alone to be considered, it might be said that the constitutional question is squarely presented for determination. But as applied to all the territory named, we have a subsequent act of the legislature ceding title to the United States and expressly reserving, among other matters, the right to exercise in the territory ceded the power to tax persons and corporations, their franchises and property, together with a congressional acceptance in the same express terms. It is not a matter of necessary judicial inquiry as to what prompted these new acts of

cession and acceptance, covering public lands reserved to the United States when California was admitted as a state, and lands formerly receded to the United States without the special reservation. It may be that the respective legislative bodies deemed that, except for the purposes enumerated in clause 17, section 8 of article I of the Constitution, and in accord with the declaration of section 6, article XIII of the state Constitution, the power had not been constitutionally delegated to the United States to hold land for other purposes exclusive of any dominion of the state, and that they therefore desired to reframe their agreement to accord with the relative existing rights of the respective sovereigns. [2] In any event, there exists no constitutional inhibition upon the power of the state to cede or the right of the United States to receive limited jurisdiction of lands for the purposes and with the reservations stated in the grant herein. The only proper function of the court, therefore, is to recognize and give effect to the act of recession of 1919 and the act of acceptance of 1920 which appear to constitute a binding and valid definition and mutual recognition of the rights and powers of the respective sovereign parties. All other related considerations fade away when it is realized that, whatever had taken place before, the taxing power of the state was reserved by the act of 1919 and that congress, by the acceptance act of 1920, recognized the continuance of that power in the state. This express recognition by both sovereigns clearly establishes the existence of the right of the state to tax in the

areas designated in accordance with the power as reserved and defined in both acts.

It is not questioned that the United States may hold limited jurisdiction of land for other than the purposes enumerated in clause 17 of section 8 of article I of the Constitution; and the cases relied upon do not preclude a holding that the extent of such limited jurisdiction for other than the specified purposes may not be the subject of change by mutual agreement between the state and the United States.

In *Fort Leavenworth R. R. Co.* v. *Lowe, supra,* at page 539, we find this statement: "It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post." In that case the state by the act of cession of land to be used as a military post had reserved the power to tax railroad and other corporations. It was held that the reservation of the taxing power did not interfere with the use of the area as a military post and that there was no constitutional prohibition against the exercise of the reserved power. (See, also, *Chicago & Pacific Ry. Co.* v. *McGlinn,* 114 U. S. 542, 545-546; *United States* v. *Unzeuta,* 281 U. S. 138, 142.) The holding in the case of *United States* v. *Unzeuta, supra,* p. 143, that ceded jurisdiction which had been accepted could not be recaptured *by the action of the state alone* (which sought to amend the act of cession), is consistent with our conclusions herein. So, also, is the state-

ment in *In re Ladd,* 74 Fed. 31, at page 38 (wherein a state amendatory act was held to be ineffective to abrogate the existing contract, and there was no express acceptance), that a ceded exclusive jurisdiction continues until "terminated, either by the United States ceasing to own and occupy the reservation, or by the United States retroceding its exclusive jurisdiction to the state". Nor is *Standard Oil Co.* v. *California,* 291 U. S. 242, in conflict. There the tax on gasoline (Stats. 1923, p. 2599), was attempted to be laid on deliveries to the Post Exchange within the Presidio in San Francisco, a military reservation over which the United States was held to have been vested with exclusive jurisdiction under the constitutional section.

[3] We conclude that the legislative act of 1919 and the congressional acceptance of 1920 operate to reserve to the state the powers stated in the respective enactments.

[4] Another ground of resistance to the imposition of the sales and gasoline taxes in the national park areas is that such taxes, being in their nature excise taxes rather than taxes on persons or property, are not within the express reserved power.

The reserved taxing powers is couched in the following language: "and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks". It is asserted that inasmuch as a tax such as the retail sales tax or gasoline tax is in its nature an

excise tax (*People* v. *Ventura Refining Co.*, 204 Cal. 286, 294; *Roth Drug, Inc.* v. *Johnson*, 13 Cal. App. (2d) 720, 730), and being neither a tax on persons, such as a poll tax, nor a tax on tangible property, the power to impose it is not within the express reservation. The plaintiff misconceives the meaning and purpose of the phraseology employed. Contrary to its contention, the rule of strict construction does not necessarily apply. The pertinent considerations are stated in *Ryan* v. *State, supra,* 61 Pac. (2d) at 1283, as follows: "But, since self-preservation is the first law of nations and states, as well as of individuals, it will not be presumed, in the absence of clearly expressed intent, that the state has relinquished its sovereignty * * * The taxing power of the state is never presumed to have been relinquished unless the language in which the surrender is made is clear and unmistakable." And the following is also pertinent: "This is not a contest between the federal government and the state as to jurisdiction. It is a contest between the state, asserting its concurrent, or partial, jurisdiction, and an individual who asserts that exclusive jurisdiction rests in the federal government. So far from there being any contest as to jurisdiction between the two sovereign powers, the record discloses that they are working in harmony and accord, each exercising the field for which it is the better equipped and each, at the same time, recognizing the field of the other. The federal government, therefore, cannot possibly be prejudiced by the result of this action."

So, in line with the applicable principle, the reserved power must be construed most strongly in favor of the state in order to preserve its jurisdiction as to matters with which it is directly and immediately concerned, and as to which jurisdiction has not been ceded or granted to the federal government. We find support also in *Nikis* v. *Commonwealth*, 144 Va. 618, 131 S. E. 236, where it was said: "That the right of a state to tax the property of others located upon lands owned by the United States, although it cannot tax such lands, will not be held to be abandoned by the state, except for the most compelling reasons, is quite manifest from several decisions of the Supreme Court of the United States." It may be noted that it was there held that to be accorded immunity from state taxation it must be shown not only that the land was acquired by the United States, but also that it was acquired and used for one of the purposes indicated in article I, section 8, clause 7 of the Constitution.

A consideration of the taxing statutes shows that the tax is imposed respectively "upon retailers" (sec. 3, Stats. 1933, p. 2599, Stats. 1935, p. 1252) and upon "distributors" of gasoline, and it has so been held. (*Roth Drug Inc.* v. *Johnson, supra,* p. 736; *People* v. *Herbert's of Los Angeles, Inc.*, 3 Cal. App. (2d) 482; *People* v. *Ventura Refining Co., supra,* at page 294; *Rio Grande Oil Co.* v. *Los Angeles,* 6 Cal. App. (2d) 200, 201.) This language in the statutes will not, of course, be construed to disturb the classification of taxable subjects—persons, property and business (State Tax on Foreign-Held Bonds, 82 U. S. 300, 319; 26 R. C. L.,

p. 34; 1 Cooley on Taxation, p. 172). Neither does it mean that the excise taxes imposed should be considered as a tax "on persons" as a subject of taxation. The language of the statutes and the decisions still leaves the sales and gasoline taxes in the category of "excises" or tax on business. Nevertheless, as stated in vol. 1, Cooley on Taxation, pp. 68-69, taxes are contributions from persons or property, and "whether a tax be considered as imposed on the person or on the property, it is clear that all taxes are imposed either upon the one or the other". It seems obvious that the language of the reservation of the taxing power contemplated the reservation to the state of the general taxing power without any exceptions other than that necessarily arising from the ownership of the land and property by the United States government. There is no inconsistency created by the express inclusion in the reserved power of the "right to fix and collect license fees for fishing in said parks". Because of the nature of the privilege specially singled out, its express inclusion does not necessarily indicate that the taxing of all other privileges was intended to be excluded from the reservation. On the contrary it would seem that it was deemed necessary expressly to refer to that subject-matter, as otherwise it might be claimed that the cession carried the exclusive supervision and regulation of fishing privileges in the streams included in the ceded areas.

[5] There is no merit in the contention that the privilege of making sales in the ceded areas emanates solely from the national government. The mere fact that the taxing power for all general

purposes has been reserved by the state with the consent of congress is a recognition by the latter that the granting of such privileges emanates as well from the state.

The main contentions urged to establish the invalidity of the reserved taxing power as here exercised by the state are answered adversely to the claims in the recent case of *Rainier National Park Company* v. *Martin,* 18 Fed. Supp. 481 (affirmed 58 Sup. Ct. Rep. 478). There the power, exercised under a similar reservation, to impose on and collect a state retail sales tax from the Rainier National Park Company was held to be valid and was sustained.

In *Yosemite Park and Curry Co.* v. *Collins, supra,* it was held that the State of California had at one time ceded exclusive jurisdiction of Yosemite valley to the United States, that the subsequent legislation attempting to reserve the taxing power was ineffective, and therefore that the state had no reserved power to enforce in Yosemite valley the Alcoholic Beverage Control Act (1935 Stats. ch. 330). That act was there declared to be a complete liquor control measure, including provisions for license fees and excise taxes. Relative to the balance of Yosemite park the court held that the reservation of the taxing power did not include the power to impose a license tax. For the reasons hereinabove stated, we are led to disagree with those conclusions of the court in that case. Nor do we perceive that they were necessary to its decision. The result in that case, if it be correct, is adequately supported by the final ground stated by the court, as follows:

"While a revenue measure does not preclude the possibility of a clash between sovereignties, it does not invite one as a regulatory measure does. California has ceded the park to the United States, which has agreed to police it. Now by reason of the Alcoholic Beverage Control Act, California evidently claims the retention of her police power. Such a claim is violative of the police jurisdiction placed in the hands of the national government, and is void. Since the primary purpose of California's tax measure is the regulation of the intoxicating liquor business; since such regulation constitutes an exercise of the police power which is beyond the jurisdiction of the state, the measure cannot bestow upon California the power to collect license taxes from plaintiff for the importation and sale of liquors."

However the exercise of the reserved power by imposition of retail sales and gasoline taxes creates no interference with the exercise of the jurisdiction acquired by the United States pursuant to the grants herein involved.

The judgment in each case is affirmed.

APPENDIX H

Sac. No. 5176. In Bank. February 25, 1938

Yosemite Park and Curry Co. (a Corporation), Plaintiff and Appellant, v. Charles G. Johnson, as Treasurer of the State of California, Defendant and Respondent.

Appeal by plaintiff from a judgment of the Superior Court of Sacramento County, Dal M.

Lemmon, Judge, in an action to recover sales taxes paid under protest. *Affirmed.*

For Appellant—Brobeck, Phleger & Harrison; Felix T. Smith, Sigvald Nielson, of Counsel.

For Respondent—U. S. Webb, Attorney General; H. H. Linney, Deputy Attorney General; James J. Arditto, Deputy Attorney General.

BY THE COURT.

The plaintiff herein sued to recover sales taxes imposed on retail sales to visitors and others in Yosemite National Park, and paid by it under protest. A demurrer to the complaint was sustained and judgment entered for the defendant. The plaintiff appealed from the judgment.

Most of the questions raised are answered by the decision this day filed in the case of *Standard Oil Company of California* v. *Johnson,* Sac. Nos. 5144 and 5145, this day decided (ante, p. 229), and that decision is deemed controlling on the disposition of those questions herein.

[1] The plaintiff is a private corporation authorized to do business in this state. It operates as United States government lessee and concessioner in Yosemite Valley under a contract with the secretary of the interior. The additional contention herein that as such lessee and concessioner it is not subject to the reserved taxing power of the state has been answered adversely in the case of *Rainier National Park Co.* v. *Henneford,* 182 Wash. 159, 45 Pac. (2d) 617 (petition for writ of certiorari denied, 296 U. S. 647). In that case a similar lessee and concessioner operating in a national park was held subject to taxation by the

state. (See, also, *Silas Mason Co.* v. *State Tax Commission,* 188 Wash. 98, 61 Pac. (2d) 1269 (affirmed 58 Sup. Ct. Rep. 233), and *Rainier National Park* v. *Martin,* 18 Fed. Supp. 481, affirmed 58 Sup. Ct. Rep. 478). We find no merit in the contention. [2] Nor may it be said that the exercise of the reserved taxing power will hinder the Yosemite Park and Curry Company in the efficient performance of its contract with the federal government.

The judgment is affirmed.

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